

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN WILLIAM BRANUM)

For Appellant: John William Branum, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jon Jensen
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John William Branum against a proposed assessment of additional personal income **tax** in the amount of \$340.83 for the year 1975. Appellant has paid

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the proposed assessment in full, and, in accordance with section 19061.1 of the Revenue and Taxation Code, the appeal therefore will be treated as an appeal from the denial of a claim for refund.

The question presented for decision is whether appellant qualified for head of household filing status for the taxable year 1975.

Appellant and his wife separated in late 1974 and have continued to live apart since that time, although they have never instituted any legal dissolution or separate maintenance proceedings. Since their separation they have sought to divide, as equally as possible, the responsibilities involved in raising their son, Ian. They rent separate two-bedroom apartments, each of which provides a bedroom for Ian. The two apartments are located within walking distance of each other and of the school which Ian attends. Appellant and his wife share the expenses incurred in raising their son and, pursuant to an informal arrangement, Ian typically spends an average of three days per week with his father and four days per week with his mother. The above described pattern of living was followed in 1975, the year on appeal.

In filing their California personal income tax returns for 1975, appellant and his wife both claimed head of household status and computed their tax accordingly. Respondent disallowed appellant's status as a head of household and treated him as a married person filing a separate return. 1/ That action gave rise to this appeal.

As a general rule, in order to qualify as a head of household a taxpayer must be not married at the close of his taxable year and must maintain as his home a household which constitutes for such taxable year the principal place of abode of an individual who bears any one of certain specified relationships to the taxpayer. (Rev. & Tax. Code, § 17042.) For years beginning on or after January 1, 1974, the benefits of head of household status are extended to certain married individuals. This is accomplished by considering a married person as not married, for purposes of classification as a head of household, if he meets certain conditions specified

1/ Initially respondent also disallowed head of household filing status to appellant's wife and she apparently paid the resulting deficiency assessment without **protest**. We understand that, subsequent to the filing of this **appeal**, respondent wrote to appellant's wife **inviting** her to **file** a refund claim.

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in subdivision (c) of section 17173 of the Revenue and Taxation Code. In order to be considered as unmarried under that subdivision, the married taxpayer must maintain as his home a household which constitutes for more than half the taxable year the principal place of abode of a qualifying dependent and, during the entire taxable year, the taxpayer's spouse must not be a member of such household.

Respondent's disallowance of appellant's claimed head of household status was based upon its determination that appellant's apartment did not constitute his son's principal place of abode during 1975, as is required under the law. This conclusion was reached when respondent learned that the son, Ian, regularly spent less time each week with appellant than he did with his mother.

Appellant's primary argument is that since he and his wife share the responsibility of raising their only son, Ian, and provide similar and substantially equal accommodations for him, they both should be entitled to head of household filing status. Any such result is clearly precluded by respondent's regulations, which provide that under no circumstances shall the same person be used to qualify more than one taxpayer as the head of a household for the same taxable year. (Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(A).)

Appellant also takes issue with respondent's determination of "principal place of abode" solely on the basis of the amount of time spent by Ian with each of his parents, since that time was significant in both cases. Appellant contends that he and his wife have consistently endeavored to provide Ian with two "separate but equal homes".

However commendable the motives of appellant and his wife may have been, the fact remains, that a taxpayer claiming head of household filing status must establish that he provided the qualifying individual's principal place of abode for the taxable year. The phrase "principal place of abode" is not defined either in the Revenue and Taxation Code or the comparable federal law regarding head of household status (Int. Rev. Code of 1954, §§ 2(b), 2(c), and 143(b)). Webster's Third New International Dictionary (1971), at page 1802, defines "principal", as used in this adjectival sense, to mean "most important, consequential or influential: relegating comparable matters, items, or individuals to secondary rank: controlling, preceding, salient". For purposes of the head of household provisions, therefore, principal place of abode must be construed to mean the one place of abode most important to the qualifying individual, relegating any other abode to secondary rank.

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As was noted earlier, during 1975 appellant's son, Ian, spent an average of four-sevenths of the time with his mother and only three-sevenths of the time with his father. Although we agree with appellant that the comparative amount of time spent by the qualifying individual in a particular household may not always be determinative of his or her principal place of abode, we nevertheless believe that in a case **such** as this one, with all other factors being **substantially** equal, the place where the **greater** amount of time is spent must be decisive.

Accordingly, we conclude that appellant has failed to establish that his apartment, rather than his wife's, constituted their son's principal place of abode for the taxable year 1975. Consequently, appellant was ineligible to file his return for that year as a head of household, and respondent's disallowance of that status **must** be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of John William Branum for refund of personal income tax in the amount of \$340.83 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

Stephen W. Bennett, Chairman
Robert M. Northington Jr., Member
Richard R. Henry, Member
James H. Kelley, Member
_____, Member